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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	_
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PENNIE & E 1667 K STREE	DMONDS LLP	EXAMINER			
SUITE 1000		SMITH, JAMES G			
WASHINGTO	N, DC 20006		ART UNIT PAPER NUMBER		ר
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Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.							
## Communication Summary Examilion	÷		Application No.	Applicant(s)			
James G. Smith James S. Smith Jame			09/824,838	MARK ET AL.			
The MAILING DATE of this communication appears on the cover sheef with the correspondence address − Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE £ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. THE MAILING DATE OF THIS COMMUNICATION. **Earthforward in the map by a evaluation of a 12 CFR 1.18(a). In no event, however, may a nely be limitly filled to the period of the period of the map by a evaluation of the period of the p		Oπice Action Summary	Examiner	Art Unit			
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1) Responsive to communication(s) filed on 04 February 2003. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-5.7-10.12-14 and 16-19 is/are pending in the application. 4a) Of the above claim(s) is/are epicted. 5) Claim(s) is/are allowed. 6) Claim(s) is/are rejected. 7) Claim(s) is/are objected to. 8) Claim(s) 1-5.7-10.12-14 and 16-19 are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some c) None of: 1. Certified copies of the priority documents have been received. 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application). a) The translation of the foreign language provisional application has been received. 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 120 (to a provisional application). a) The translation of the foreign language provisional application has been received.	THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).						
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DETAILED ACTION

1. The amendment filed 04 February 2003 is entered. The Finality of the last Office action is withdrawn and a new action is rendered below.

Election/Restrictions

- 2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - Claims 1-5, 7-10 and 12, drawn to a driver, classified in class 81, subclass
 452.
 - II. Claims 13, 14 and 16-19, drawn to a method of performing surgery, classified in class 606, subclass 72+.

The inventions are distinct, each from the other because of the following reasons:

- 3. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product can be used to secure or rotate any type of element, not just bone screws.
- 4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
- 5. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
- 6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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7. Applicants are advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be

traversed (37 CFR 1.143).

8. Applicants are reminded that upon the cancellation of claims to a non-elected

invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one

or more of the currently named inventors is no longer an inventor of at least one claim

remaining in the application. Any amendment of inventorship must be accompanied by

a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

9. Any inquiry concerning this communication or earlier communications from the

examiner should be directed to James G. Smith whose telephone number is 703-308-

1746. The examiner can normally be reached on M-Th (7:05- 4:35) first Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Joseph J. Hail, III can be reached on 703-308-2687. The fax phone

numbers for the organization where this application or proceeding is assigned are 703-

305-3579 for regular communications and 703-305-9835 for After Final

communications.

Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist whose telephone number is 703-308-

1148.

James G. Smith Primary Examiner

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February 10, 2003

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